

**CITY OF NEWTON  
PURCHASING DEPARTMENT**

***CONTRACT FOR PUBLIC WORKS***

***PROJECT MANUAL:***

**SUPPLY AND DELIVER READY-MIX CONCRETE  
TO VARIOUS LOCATIONS AS REQUIRED**

***INVITATION FOR BID #12-34***

**Bid Opening Date: January 13, 2012 at 10:30 a.m.**

**DECEMBER 2011**

**Setti D. Warren, Mayor**

**CITY OF NEWTON**  
**PURCHASING DEPARTMENT**  
**INVITATION FOR BID #12-34**

The City of Newton invites sealed bids from Contractors to:

**SUPPLY AND DELIVER READY- MIX CONCRETE  
TO VARIOUS LOCATIONS AS REQUIRED**

**Bids** will be received until: **10:30 a.m., January 13, 2012**

at the Purchasing Department, Room 204, Newton City Hall, 1000 Commonwealth Ave., Newton, MA 02459. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

The term of this contract shall extend from **April 1, 2012 through March 31, 2013**. It is further understood that in the event the term of this contract extends beyond June 30 in any calendar year, the City reserves the right to terminate the contract if funding for its continuance is not appropriated in the succeeding fiscal year commencing July 1. The dollar value of the contract may not be increased by an amount more than twenty five percent (25%) of the contract total.

Contract Documents will be available online at [www.ci.newton.ma.us/bids](http://www.ci.newton.ma.us/bids) or pick up at the Purchasing Department after **10:00 a.m., December 29, 2011**. There is no charge for contract documents.

**Work under this contract requires a contractor to supply and deliver READY MIX concrete at various locations in accordance with Project Manual.**

The City of Newton will award the contract to the lowest eligible and responsible bidder. Please Note: this bid, in accordance with the Chapter 303 Acts of 2008, contains Price Adjustments and new Prevailing Wage requirements. All bidders are required to familiarize themselves with these terms and conditions before submitting a bid.

All bids are subject to the provisions of M.G.L. Chapter 30B.

**All bids shall be submitted as one ORIGINAL and one COPY.**

All City of Newton bids are available on the City's web site, [www.ci.newton.ma.us/bids](http://www.ci.newton.ma.us/bids) or 1000 Commonwealth Avenue, Room 204, Invitation for Bid. It is the sole responsibility of the contractor downloading these bids to ensure they have received any and all addenda prior to the bid opening. Addenda's will be available online.

The City of Newton will reject any and all bids when required to do so by the above referenced General Laws. In addition, the City of Newton reserves the right to waive any informalities in any or all bids, or to reject any or all bids in whole or in part, if it be in the public interest to do so.

CITY OF NEWTON

Rositha Durham  
*Chief Procurement Officer*

December 29, 2011

**CITY OF NEWTON  
DEPARTMENT OF PURCHASING  
INSTRUCTIONS TO BIDDERS**

**ARTICLE 1 - BIDDER'S REPRESENTATION**

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:
1. The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
  2. The Bidder has visited the site and is familiar with the local conditions under which the Work has to be performed.
- 1.2 Failure to so examine the Contract Documents and site will not relieve any Bidder from any obligation under the bid as submitted.

**ARTICLE 2 - REQUEST FOR INTERPRETATION**

- 2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) or via facsimile (617) 796-1227. The City will answer such requests if received Friday, January 6, 2012 at 12:00 noon.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by Addendum which will become part of the Contract Documents. The City will not be held accountable for any oral instruction.
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at [www.ci.newton.ma.us/bids](http://www.ci.newton.ma.us/bids).
- 2.6 Bidders or proposers contacting ANY CITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the Purchasing Department, once an IFB or RFP has been released, may be disqualified from the bidding process.
- 2.7 Bidders downloading information off the internet web site are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes themselves known to the Purchasing Dept., at [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) or via facsimile (617) 796-1227, they shall be placed on the bidder's list. Bidders must provide the Purchasing Dept. with their company's name, street address, city, state, zip, phone, fax, email address and **INVITATION FOR BID #12-34**.

**ARTICLE 3 - MBE PARTICIPATION**

- 3.1 Notice is hereby given that the Mayor's Affirmative Action Plan for the City of Newton, dated December 1999 is applicable to all construction contracts in excess of \$10,000.00. A copy of this plan is on file at City of Newton Purchasing Department.
- 3.2 Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 and the Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program is applicable to all City contracts for goods and services in excess of \$50,000.00. Copies of these plans are incorporated in the bidding documents.

**ARTICLE 4 - PREPARATION AND SUBMISSION OF BIDS**

- 4.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the City.
- 4.2 All entries on the Bid Form shall be made by typewriter or in ink.

- 4.3 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- 4.4 Bid Deposits shall be submitted in the amount specified in the Invitation for Bids. They shall be made payable to the City of Newton and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid.
- Bid deposits of the three (3) lowest responsible and eligible Bidders shall be retained until the execution and delivery of the Owner/Contractor agreement.
- 4.5 The Bid, including the bid deposit shall be enclosed in a sealed envelope with the following plainly marked on the outside:
- \* GENERAL BID FOR:
  - \* NAME OF PROJECT AND **INVITATION NUMBER**
  - \* BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER
- 4.6 Date and time for receipt of bids is set forth in the Invitation for Bids.
- 4.7 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder.
- 4.8 Bids shall be submitted with one original and one copy. Be advised that a new Massachusetts law has been enacted that required all employees who work on Massachusetts public works construction sites must have no less than 10 hours of OSHA-approved safety and health training. See Chapter 306 of the Acts of 2004, which will become effective July 1, 2006.
1. This requirement will apply to any general bid or sub bid submitted on or after July 1, 2006 and to any contract awarded on or after July 1, 2006.
  2. This law directs the Massachusetts Attorney General to restrain the award of construction contracts to any contractor who is in violation to this requirement and to restrain the performance of these contracts by non-complying contractors.
  3. The contractor and all subcontractors on this project will be required to provide certification of compliance with this requirement. Non-compliance with this new Massachusetts Law will disqualify you from bidding on public contracts.
- 4.9 **PRICE ADJUSTMENT CLAUSES CHAPTER 90 FUNDS**

It is the intention of the City to include price adjustments in the award of this Contract. These price adjustments shall be for 1) Fuel 2) Liquid Asphalt and/or for 3) Portland Cement when such commodities have been determined to be integral components of the work.

For those commodities designated to be paid as a 'differential' items then the special provision shall provide for a price adjustment formula for the affected items. This adjustment shall be based on the difference between the **Base Price** and the **Period Price** which shall be evaluated on a **monthly** basis, but price adjustments shall only be made if the monthly cost change exceeds **+/- 5 per cent**. Subsequently each respective price adjustment shall be made as specified under each applicable and separate payment item.

**IMPORTANT NOTE:** Depending on the prevailing market trends at the time of payment these price adjustments may provide for additional compensation to the Contractor, or they may otherwise result in a repayment to the City. The increase or a decrease in the value of the commodity, during the applicable payment period in which the goods and/or services were rendered, shall be the determinant factor.

The City will refer to the Massachusetts Highway Department price adjustment tables as included in this bid package to establish the base price and will be used for the actual period price.

**Price Adjustment Clauses – to apply as follows:**

- **Diesel and Gasoline** – The Base Price, and the Period Price of fuel, shall be the derived average cost of Diesel Fuel and Gasoline Fuel combined for each applicable payment period. Fuel adjustments shall apply to all work in the contract. The Contractor, at their own election, may either choose to bid their fuel costs separately, or he may otherwise elect to incorporate their fuel costs into separate payment items. In any event the Contractor's final bid prices shall include the fuel costs for all goods & services rendered under this contract.

- **Liquid Asphalt** –The price adjustment shall apply only to the actual virgin Liquid Asphalt content contained in the applicable Asphalt and/or Bituminous Concrete mixture.
- **Portland Cement**- The price adjustment shall apply only to the actual Portland Cement content contained in the applicable Cement Concrete mixture.

No price adjustment will be allowed beyond the completion date of the contract unless there is an approved extension of time by the City.

#### ARTICLE 5 - ALTERNATES

- 5.1 Each Bidder shall acknowledge Alternates (if any) in Section C on the Bid Form.
- 5.2 In the event an Alternate does not involve a change in the amount of the base bid, the Bidder shall so indicated by writing "No Change", or "N/C" or "0" in the space provided for that Alternate.
- 5.3 Bidders shall enter on the Bid Form a single amount for each Alternate which shall consist of the amount for work performed by the Contractor.
- 5.4 The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

#### ARTICLE 6 - WITHDRAWAL OF BIDS

- 6.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or telegraphic request. Telegraphic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
- 6.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 6.3 No bids shall be withdrawn within thirty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

#### ARTICLE 7 - CONTRACT AWARD

- 7.1 The City of Newton will award the contract to the lowest eligible and responsible Bidder within thirty days, Saturdays, Sundays, and legal holidays excluded after the opening of bids.
- 7.2 The City of Newton reserves the right to waive any informalities in or to reject any or all Bids if it be in the public interest to do so.
- 7.3 As used herein, the term "lowest responsible and eligible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 7.4 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a Contract in the form included in the Contract Documents in such number of counterparts as the City may require.
- 7.5 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

#### ARTICLE 8 - TAXES

- 8.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.

- 8.2 The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City's exemption Number is E-046-001-404.

**END OF SECTION**

**CITY OF NEWTON**  
**DEPARTMENT OF PURCHASING**  
**BID FORM #12-34**

- A.** The undersigned proposes to supply and deliver the materials specified below in full accordance with the Contract Documents and Project Manual supplied by the City of Newton entitled:

**SUPPLY AND DELIVER READY- MIX CONCRETE  
TO VARIOUS LOCATIONS AS REQUIRED**

for the contract price specified below, subject to additions and deduction according to the terms of the specifications.

- B.** This bid includes addenda number(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,
- C.** The Contractor/Vendor shall insert prices for each item in ink, in both words and figures.

Total contract price is \$ \_\_\_\_\_

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents  
(Contract price that shall equal the Total of the attached Item Sheets)

COMPANY NAME: \_\_\_\_\_

- D.** The undersigned has completed and submits herewith the following documents:
- ☐ Signed Bid Form, 2 pages
  - ☐ Bidder's Qualifications and References Form, 2 pages
  - ☐ Certificate of Non-Collusion
  - ☐ Item Sheets, 5 pages
- E.** The undersigned agrees that, if selected as contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City of Newton, execute a contract in accordance with the terms of this bid. The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that's/he will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30B.

The undersigned further certifies under the penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this section the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date \_\_\_\_\_

\_\_\_\_\_

(Name of General Bidder)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name and Title of Signatory)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State Zip)

\_\_\_\_\_  
(Telephone) / (FAX)

\_\_\_\_\_  
(E-mail address)

**NOTE:** If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address; and, if operating as a d/b/a give full legal identity. Attach additional pages as necessary.

**END OF SECTION**



## CITY OF NEWTON

### BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City of Newton for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: \_\_\_\_\_
2. WHEN ORGANIZED: \_\_\_\_\_
3. INCORPORATED? \_\_\_\_\_ YES \_\_\_\_\_ NO DATE AND STATE OF INCORPORATION: \_\_\_\_\_
4. IS YOUR BUSINESS A **MBE**? \_\_\_\_\_ YES \_\_\_\_\_ NO **WBE**? \_\_\_\_\_ YES \_\_\_\_\_ NO or **MWBE**? \_\_\_\_\_ YES \_\_\_\_\_ NO
- \* 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \* 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?  
\_\_\_\_\_ YES \_\_\_\_\_ NO  
IF YES, WHERE AND WHY?  
\_\_\_\_\_  
\_\_\_\_\_
- \* 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? \_\_\_\_\_ YES \_\_\_\_\_ NO  
IF YES, PROVIDE DETAILS.  
\_\_\_\_\_  
\_\_\_\_\_
- \* 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- \* 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.  
  
PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_

DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Newton in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: \_\_\_\_\_ BIDDER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**END OF SECTION**

## **CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

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(Signature of individual)

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Name of Business

## CONTRACT FORMS

The awarded bidder will be required to complete and submit the following documents in order to execute a contract pursuant to this bid.

The forms are provided for informational purposes only.

**None of the following forms are required at the time of bid submittal.**

## CITY - CONTRACTOR AGREEMENT

### CONTRACT NO. C -

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Twelve by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to her, and hereinafter referred to as the CONTRACTOR.

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to furnish and to deliver to the City at such times, at such place or places, in such manner, and in such quantities as the City may direct, and at the unit prices quoted in the Contractor's bid the following item or items:

#### **SUPPLY AND DELIVER READY-MIX CONCRETE TO VARIOUS LOCATIONS AS REQUIRED**

- II. CONTRACT DOCUMENTS.** The Contract Documents consist of the following documents, which are either attached to this Agreement or are incorporated herein by reference:
- a. This CITY-CONTRACTOR Agreement;
  - b. The City's Invitation For Bid #12-34 issued by the Purchasing Department;
  - c. The Project Manual for Supply and Deliver READY Mix Concrete including Specifications, and if included or referenced therein, any Standard Terms and Conditions, Drawings or Descriptive Materials;
  - d. Addenda Number(s)\_\_\_\_\_;
  - e. The Bid Response of the CONTRACTOR submitted for this Project and accompanying documents and certifications;
  - f. Certificate(s) of Insurance and surety bond(s), if any, submitted by the CONTRACTOR in connection with this Project;
  - g. Duly authorized and executed Amendments, Change Orders or Work Orders issued by the CITY after execution of this CITY-CONTRACTOR Agreement.

This CITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the CONTRACTOR.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONTRACTOR Agreement and the Project Manual, the terms of this Agreement shall prevail.

- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.

- V. CONTRACT TERM.** The term of this contract shall extend from **April 1, 2012 through March 31, 2013**. It is further understood that in the event the term of this contract extends beyond June 30 in any calendar year, the City reserves the right to terminate the contract if funding for its continuance is not appropriated in the succeeding fiscal year commencing July 1. The dollar value of the contract may not be increased by an amount more than twenty five percent (25%) of the contract total.
- VI. QUANTITIES.** The quantities specified in the Project Manual are approximate and are based on previous consumption. It is specifically understood the City does not agree to purchase any specific quantity, and purchases will be made to cover actual requirements only. The City may increase or decrease the quantity of any item specified without change in price per unit of quantity as stated in the Contractor's Bid Response.
- VII. MATERIALS.** The Contractor agrees, unless otherwise specified, that all equipment, materials and supplies furnished under this contract are to be first quality, new and unused.
- VIII. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work or make deliveries. No work shall be commenced or deliveries made unless authorized by a written Work Order issued by the City specifying the equipment, materials or supplies to be delivered. The Contractor will be paid following completed delivery and acceptance of the equipment, materials or supplies ordered in accordance with the Contract. The City will use best efforts to pay within thirty (30) days of receipt of an invoice for the delivered equipment, materials or supplies or acceptance of same whichever date is later.
- IX. CLAIMS FOR MATERIALS OR LABOR.** In the event any claims have been filed with the City for material or labor delivered or performed pursuant to this contract, the City shall be under no obligation to make any payment until such claims are adjusted to the satisfaction of the City. Any and all liens for supplies may be paid off by the City within twenty (20) days after the filing for record as provided by law of a notice of such liens, except where the claim on which the lien is filed is being litigated by the Contractor, and in such case the City may pay the amount of any final judgment or decree on any such claim. All money paid by the City in settlement of liens and claims as aforesaid, with the costs and expenses incurred by the City in connection therewith shall be charged to the Seller, bearing interest at the rate of six percent (6%) per annum, and be deducted from the next payment falling due the Seller under the terms of this contract.
- X. UNIT PRICES.** It is agreed that the unit prices listed are maximum prices and that the City shall be entitled to take advantage of any decreasing market conditions, decreases to be governed by the manufacturers' price listing as might be generally adopted in the trade, or by the same percentage that the Seller may reduce prices to others who purchase in similar quantities and under similar conditions.
- XI. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** In the performance of any work, including the delivery of equipment, materials or supplies, pursuant to this Contract, the Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage, which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- XII. WARRANTY.** Except as may be otherwise provided in the Project Manual, the Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of equipment, materials or supplies furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- XIII. PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.

- XIV. INSPECTION.** For the purposes of inspection of the equipment, materials and supplies covered by this contract, the Contractor shall give the City free access to his works and furnish every facility for properly inspecting such equipment, materials and supplies, and shall furnish full information, whenever requested, relating thereto. Approval by any inspector of the City shall not relieve the Contractor from his obligation to comply in all respects with the contract.
- XV. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XVI. INSTALLATION.** If any of the equipment, materials and supplies covered by this contract is to be installed by either the Contractor or the City, the Contractor shall, upon request of the City, furnish a competent employee to supervise the installation without expense to the City, unless otherwise provided herein. Such supervisor, or other employees furnished by the Contractor, shall be the agents of the Contractor and not of the City, and the Contractor hereby agrees to indemnify the City and hold it harmless from and against any and all loss, costs, damage, and expense sustained as the result of negligence or other conduct on the part of such supervisor or employee.
- XVII. TERMINATION.** The City of Newton may, by written notice of default to the Contractor, terminate the whole or any part of this Contract or any Shipping of Work Order issued pursuant thereto in any one of the following circumstances:
- a. If the Contractor fails to make delivery of the equipment, goods or supplies or to perform the services within the time specified herein or any extension thereof;
  - b. If the Contractor fails to perform any of the other provisions of this contract or, if in the opinion of the City, Contractor so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not correct such failure within thirty (30) days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.
- XVIII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIX. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.
- XX. AMENDMENTS TO THIS CONTRACT.** This Contract may not be amended except in writing executed in the same manner as this CITY-CONTRACTOR Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

**CONTRACTOR**

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*Affix Corporate Seal Here*

City funds in the amount of \$ \_\_\_\_\_  
are available in account number:  
0140105-5530

I further certify that the Mayor, or his designee,  
is authorized to execute contracts and approve  
change orders:

By \_\_\_\_\_  
*Comptroller of Accounts*

Date \_\_\_\_\_

**CITY OF NEWTON**

By \_\_\_\_\_

*Chief Procurement Officer*

Date \_\_\_\_\_

By \_\_\_\_\_

*Commissioner of Public Works*

Date \_\_\_\_\_

Approved as to Legal Form and Character

By \_\_\_\_\_

*Associate City Solicitor*

CONTRACT & BONDS ARE APPROVED

By \_\_\_\_\_

*Mayor or his designee*

Date \_\_\_\_\_



## CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_ *AFFIX CORPORATE*  
(Signature of **Clerk or Secretary**)\* *SEAL HERE*
7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*
8. Date: \_\_\_\_\_  
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

\* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.

## ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.\*

\_\_\_\_\_  
\*\*Signature of Individual  
or Corporate Contractor (Mandatory)

\_\_\_\_\_  
\*\*\* Contractor's Social Security Number  
(Voluntary) or Federal Identification Number

By: \_\_\_\_\_  
Corporate Officer  
(Mandatory, if applicable)

Date: \_\_\_\_\_

\* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

\*\* Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

\*\*\* Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.

**CITY OF NEWTON**  
**MINORITY/ WOMEN BUSINESS ENTERPRISE PLAN**  
**DECEMBER 1, 1999**  
**JANUARY 21, 2010 revised**

**STATEMENT OF POLICY:**

Whereas it is the policy of the government of the United States of America, the Commonwealth of Massachusetts and the City of Newton that no person shall be discriminated against in any manner whatsoever on the grounds of race, religion, color, sex, handicap or national origin; and

Whereas, it is the policy of the government of the United States of America that no person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program of activity funded entirely or in part by the City, the State or Federal government; and

Whereas, it is the policy of the government of the United States of America to encourage that Minority/Women Business Enterprises shall have the maximum practicable opportunity to participate in Federal and State assisted projects; and all City funded contracts; and

Whereas, it is the policy of the City of Newton to encourage that minority/women business enterprises shall have the maximum practicable opportunity to participate in all City funded contracts; and

Whereas, the City of Newton, as a recipient of Federal and State funds subscribes to the above policies and will fully comply With Federal, State and local laws and directives governing non-discrimination, equal opportunity and affirmative action in all municipal activities; and

Whereas, to further enunciate the equal opportunity policy of the City of Newton's Minority/Women Business Program, the following responsibilities are specified

This MINORITY/ WOMEN Business Enterprise Plan sets forth the administrative standards for the further implementation of the City of Newton's policy of the utilization of minority contractors and subcontractors.

The City of Newton strongly affirms that it will not discriminate in any contractual procedures against any persons because of race, color, religion, age, disability, sex or national origin. This policy shall be administered with a positive supportive attitude.

It is the responsibility of the City of Newton to take affirmative steps to implement this policy to insure equality of opportunity in conducting the Program including notifying those persons and businesses doing business with the City, that contracts for goods, services and construction, shall be made Without reference or regard to race, color, sex, age, handicap, religion or national origin.

Setti D. Warren Mayor

CITY OF NEWTON  
MINORITY/ WOMEN BUSINESS ENTERPRISE PLAN  
JANUARY 21, 2010

**I. DEFINITIONS:**

A. **Minority Person**- the term includes a person who is of Black Hispanic, Asian, American Indian or Cape Verdean origin.

B. **Minority Business Enterprise (MBE)** -- the term shall mean a business a) that is certified by SOMWBA; or b) I provides evidence satisfactory to the City's Affirmative Action Officer that it is a business owned or controlled by one or more of the following:

- an individual who is a minority person,
- a partnership or joint venture controlled by minority persons in which at least 51 % of the ownership interest is held by minority persons or,
- a corporation or other entity controlled by minority persons and in which at least 51 % of the stock is owned by one or more minority persons.

C. **Contract Compliance Officer** - the Chief Procurement Officer or his/her designee responsible for the implementation of Newton's Minority/Women Enterprise Plan ("MWBE Plan") and activities.

D. **MCAD** - Massachusetts Commission Against Discrimination.

E. **SOMWBA** -- State Office of Minority/Women Business Assistance,

F. **City** - The City of Newton.

G. **Women Business Enterprise (WBE)** - the term shall mean a business a) that is certified by SOMWBA; or b) provides evidence satisfactory to the City's Affirmative Action Officer that it is a business owned or controlled by one or more of the following:

- an individual who is a woman.
- a partnership or joint venture controlled by women in which at least 51% of the ownership interest is held by women, or
- a corporation or other entity controlled by women and in which at least 51% of the stock is owned by one or more women.

H. **MWBE** — Minority or Women Business Enterprise

**II. GOALS:**

Newton's Minority/Women Enterprise Plan ("MWBE Plan") shall be guided by the goals presented below to promote minority/women opportunities within the City.

These goals comprise the framework for those activities to be implemented as part of the MWBE Plan:

To take affirmative action in expanding opportunities for minority and women owned firms in obtaining contracts within the City of Newton.

To assure that all contractors, regardless of race color, religion, creed, national origin, sex, age, ancestry or handicap, shall have equal opportunity to City contracting activities.

To award, of the total annual City contract dollars expended, 10 percent to MBE and 5 percent to WBE for construction; for goods and services, 5 percent WBE and 5 percent MBE.

### **III. SOLICITATION ACTIVITIES:**

To notify MWBEs of upcoming contracts for construction, professional services and supplies, funded in whole or in part with Federal, State, and City funds, the following activities will be undertaken. In addition on a regular basis, the City of Newton will distribute to its listing of MWBEs and SOMWBA, a summary of upcoming contract opportunities which are subject to the City's MWBE Plan.

#### **A. Construction Contracts**

All construction contracts with an estimated value over \$50,000 will be formally advertised within local, regional, minority and special interest publications at least 14 days prior to the bid opening date.

For all such construction contracts a "Notice of Solicitation" of a project going out to bid will be distributed to appropriate SOMWBA or City certified firms at least 14 days prior to the bid opening date.

#### **B. Contracts for Professional Services**

The City of Newton will send notification of its advertised Request for Proposals to appropriate! SOMWBA or City certified firms Responding MWBE firms will be considered for contract award within the bounds of generally accepted management practice or with the applicable procurement law relating to securing the lowest cost and best services available.

#### **C. Procurement of Supplies**

The City of Newton will (where feasible) utilize MWBEs for the procurement of supplies in accordance with City purchasing procedures. These efforts will be documented and reported to MCAD, and the Mayor's office on a quarterly basis.

### **IV. CONSTRUCTION ACTIVITIES:**

#### **A. Goals**

The City of Newton bid documents and contracts with an estimated value over \$50,000 will contain the City's goal of 10% for MBE and 5% for WBE utilization for subcontracts,

#### **B. Pre-Bid Conference**

To affirmatively further the opportunities available to prospective bidders, the City will hold a pre-bid conference 5-7 days prior to the bid opening date for all City construction contracts and subcontracts with an estimated value over \$50,000.

The pre-bid conference will provide an opportunity for contractors to: review and clarify the technical requirements of the projects, review the City's MWBE Plan; and review Equal Opportunity requirements. The City will advertise this conference and extend invitations to interested contractors as part of the notice of solicitation.

**C. Bid Submission**

All bids for City of Newton contracts with -an estimated value over \$50,000 shall include a certification of intent to be completed by the bidder swing his/her intent to comply with the City's MWBE Plan. Failure to include this certification shall be an informality which may be waived if such certification is received prior to the award of the contract.

**D. Contract Execution**

Upon notification of award of the contract, the bidder shall provide a written plan detailing how it will comply with the MWBE Plan

**E. Monitoring**

Throughout the duration of the contract, the City of Newton through its Contract Compliance Officer, will monitor the progress and activities of all contractors and subcontractors as they attempt to comply with the MWBE Plan.

**F. Enforcement**

In the case of clear neglect to make a good faith effort to comply with this MWBE Plan, the City of Newton reserves the right to designate contractor, after a hearing, as ineligible for future City bid awards.

**V. CONTRACT COMPLIANCE OFFICER/DUTIES AND RESPONSIBILITIES:**

The Contract Compliance Officer, as liaison between minority firms and the City of Newton will have the overall responsibility for the implementation of Newton's MWBE Plan. This responsibility includes the development, management, dissemination of information; the provision of technical assistance to minority firms including clarification of procedures to be implemented; maintenance of relevant documentation; completion of reporting requirements; and performance of monitoring and evaluation activities; and maintenance and updating of listings of minority/women business.

The Contract Compliance Officer has oversight of all City procurements for construction, professional services and supplies and shall coordinate the implementation of the MWBE Plan with other City departments.

**THE CITY OF NEWTON, MASSACHUSETTS**  
**SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY**  
**ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM**

- I. The requirements hereinafter set forth apply to construction contracts which involve an expenditure by the City of \$50,000 or more.
- II. For purposes of this contract "minority" refers to Asian Americans, Black, Hispanics American Indians and Cape Verdeans. The City refers to the- City of Newton
- III. During the performance of this contract the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor) , for himself, his assignees, and successors in interest, agree as follows:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and the selection of apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the City setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (MGL Chapter 151 B) . (See Attachment A)

2. In connection with the performance of work under this contract, the Contractor shall undertake in good faith, affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination -in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal employment: opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, Layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age or sex. A purpose of- this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future City public construction projects
- 
1. As part of this obligation of remedial action under the foregoing section, the contractor shall maintain on this project a not less than 5 percent ratio of minority employee man hours to total man hours in each job category, including, but not limited to, bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.
  2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals, from the Contractor's affirmative action program approved by the City, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the City.

1. At the discretion of the City, there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of the Compliance Officer and one representative each from the Departments administering this project, hereinafter called the administering Departments, and such other representatives as may be designated by the City.
2. The Contractor (or, his/her agent, if any, designated by him/her as the onsite equal employment opportunity officer) shall recognize the Liaison Committee as the affirmative action body, and shall establish a continuing working relationship with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare manning tables on a quarterly basis.\* These shall be broken down into projections, by week, for workers required in each trade. Copies shall be furnished one week in advance of the initiation of work and quarterly thereafter to the City and to the Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the City and to the Liaison Committee on request.
5. The contractor shall prepare weekly reports in a form approved by the City of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these reports shall be provided at the end of each week to the City and to the Liaison Committee.

\* If job is less than three months, prepare for length of job.

- VI. If the Contractor shall use any sub contractor on any work performed under this contract, he/she shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of: Minority *Business Assistance* or As designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.
- VII. In the employment of journeyman, apprentices, trainees, and advanced trainees, the Contractor shall give preference to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged there from or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States
- VIII. A designee of the City and a designee of the Liaison Committee shall each have the right of access to the Construction site,
- IX. **Compliance with Requirements**  
The Contractor shall comply with the provisions of Chapter 151 B of the Massachusetts General Laws, which are herein incorporated by reference and made as amended by Executive Order 227, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.
- X. **Non-Discrimination**  
The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on the grounds of race, color, religious creed,



national origin, age or sex in employment practices, in the selection or retention of sub-contractors, or in the procurement of materials and rentals of equipment.

**XI. Solicitations for sub-Contracts and for the Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under his contract relative to non-discrimination and affirmative action.

**XII. Bidders Certification Requirement**

1. The following certification statement will be inserted in the bid document just above the bidder's signature.

"The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the City of Newton, Massachusetts Supplemental Equal Employment-- Opportunity Anti-Discrimination and Affirmative Action Program. The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors and submit to the contracting or, administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the City of Newton Massachusetts Supplemental Equal Employment Opportunity Anti -Discrimination and Affirmative Action Program.

**XIII. Contractor's Certification**

A Contractor's certification form must be signed by all successful low bidders prior to award by the City. A Contractor shall not be eligible for award of a contract unless the contractor has executed and submitted the Contractor's Certification, which shall be deemed a part of the resulting contract. (See Attachment B)

**XIV. Subcontractor's Certification**

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor a subcontractor's certification setting forth the subcontractor's compliance with this program, which shall be deemed a part of the resulting subcontract. (See Attachment C)

**XV. Compliance - Information, Reports and Sanctions**

1. The Contractor will provide all information and reports required by the administering department or, the City on instruction issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which

may be determined by the City to affect the employment of personnel. This provision shall apply only to information pertinent to the City's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering department or the City as appropriate and shall set forth what efforts he/she has made to obtain the information.

2. Whenever the administering department, the City, or the Liaison Committee believes the General Contractor or any Subcontractor may not-, be operating in compliance with the terms of this Section, the City directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the City or its agent finds the General Contractor or any Subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the City or its agent bring such Contractor into compliance. In the event, that such Contractor fails or refuses to fully perform such steps, the City shall make a final report of non-compliance, and recommend to the administering department the imposition of one or more of the sanctions listed below. If, however, the City believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance, within fourteen days at the receipt of the recommendations of the City, the administering department shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (a) The recovery by the administering department from the General Contractor of 1/100 of!! of the contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or  
if a Subcontractor is in non-compliance, the recovery by the administering department from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the sub-contract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply
- (b) The suspension of *any* payment of part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;
- (c) The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his/her compliance  
with the terms of the City's affirmative action construction contract requirements; OR,
- (d) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering department for a
- (e) Period of up to three years.

3. If at any time after the imposition of one or more of the above sanctions (unless the contract has been terminated), a Contractor is able to demonstrate that he/she is in compliance with this section, he/she may request the City to suspend the sanctions conditionally pending a final determination by the City as to whether the Contractor is in

compliance. Upon final determination of the City, the administrating department, based upon the recommendation of the City, shall either lift the sanctions or continue them.

4. Sanctions enumerated under Section XV shall not be imposed by the City except after the General Contractor or Subcontractor has had an opportunity for full and fair hearing with City. The non-compliance investigation shall be initiated without prior notice to the contractor. Any sanctions to be imposed shall be, set forth fully and completely in writing, and may then be appealed to the City in writing by the Contractor.

**.XIV. Severability**

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not, affect or impair any of the remaining provisions.

# FAIR EMPLOYMENT LAW

The Fair Employment Law declares that it is illegal to discriminate on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability

## IT IS UNLAWFUL:

- to print or circulate any advertisement or use any application form which directly or indirectly specifies any limitation on the basis of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability.
- to discharge or refuse to hire any individual on file basis of their race, color, religious creed, national origin, sex, sexual orientation, age, ancestry, or disability.
- to discriminate against any individual in matters relating to compensation, terms, conditions, or privileges of employment because of their race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability.
- to require a woman to leave her job at some arbitrary stage in her pregnancy or to refuse to let her return to work until a specified time set by the employer.
- to grant a female employee at least eight weeks leave for purposes of childbirth or to treat her absence differently than any other absence due to disability.
- to require an employee to remain at work during any day or part thereof that s/he observes as a religious holiday provided that the employee gives a ten-day notice and the absence does not cause undue hardship to the employer.
- to discharge or refuse to hire any person because of their failure to furnish information concerning admission to a center for the treatment of mentally ill persons.
- to discriminate against a job applicant for failure to furnish information, written or oral, concerning:- A) an arrest, detention or disposition regarding a violation of law in which no conviction resulted; B) a first conviction for any of the following misdemeanors: driving under the influence, simple assault, speeding, minor traffic violations, disturbance of the peace; or C) conviction for a misdemeanor where the date of the conviction or end of period of incarceration, if any, occurred more than five years prior to the employment application, and the applicant has not been convicted of any offense within the five years immediately before the date of application.

## RETALIATION

It is illegal to retaliate against any person because s/he has opposed any practices forbidden under this Chapter or because s/he has filed a complaint, testified, or assisted in any proceeding before the Commission. It is also illegal to aid, abet, incite, compel or coerce the doings of any of the acts forbidden under this Chapter or to attempt to do so.

## SEXUAL HARASSMENT

**151B:1,18 The term "sexual harassment" shall mean sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment, or as a basis for employment decisions: (b) such advances,, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.**

## COMPLAINTS

All complaints must be filed in writing. Information on the filing of complaints can be obtained by contacting the MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION at the following locations:

Boston office:  
One Ashburton Place  
Room 601  
Boston, MA 02108  
(617) 727-3990

Springfield office:  
436 Dwight Street  
Suite 315  
Springfield, MA 01103  
(413) 739-2145

CITY OF NEWTON

Contractors Certification

A Contractor will not be eligible for award of a contract, unless such contractor has submitted the following certification, which is deemed a part of the resulting contract.

CONTRACTOR'S CERTIFICATION

\_\_\_\_\_. Certifies that:  
Contractor's Name

1. it tends to use the following listed construction trades in the work under the contract \_\_\_\_\_  
\_\_\_\_\_ and
2. will comply with the minority manpower ration and specific affirmative action steps contained herein;  
and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions

\_\_\_\_\_  
(Signature of authorized representative of Contractor)

Any contract for the provision of goods or services to the City of Newton or any of its departments is subject to the ordinance creating the Human Rights Commission, as it may be amended from time to time. Any complaints within the purview shall be forwarded immediately to the contracting agency, and a copy shall be sent to the Human Rights Commission; any complaints received by the contracting agency shall be forwarded to the contractor, and a copy shall be sent to the Human Rights Commission.

CITY OF NEWTON

Subcontractors Certification

Prior to the award of any subcontract , regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract.

SUBCONTRACTOR'S CERTIFICATION

\_\_\_\_\_  
Contractor's Name Certifies that:

2. it tends to use the following listed construction trades in the work under the contract \_\_\_\_\_  
\_\_\_\_\_ and
2. will comply with the minority manpower ration and specific affirmative action steps contained herein;  
and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions

\_\_\_\_\_  
(Signature of authorized representative of Contractor)

In order to ensure that the said subcontractor's certification becomes part of all subcontracts under the prime contract, no subcontract shall be executed until an authorizee representative of the Administrative Agency administering this project has determined in writing, that the said certification has been incorporated in such subcontract, regardless of tier, Any subcontract executed without such written approval shall be void.

Any contract for the provision of goods or services to the City of Newton or any of its departments is subject to the ordinance creating the Human Rights Commission, as it may be amended from Lime to Lime. Any complaints within the purview shall be forwarded immediately to the contracting agency, and a copy shall be sent to the Human Rights Commission; any complaints received by the contracting agency shall be forwarded to the contractor, and a copy shall be sent to the Human Rights Commission.

**CITY OF NEWTON, MASSACHUSETTS  
PURCHASING DEPARTMENT  
GENERAL TERMS AND CONDITIONS**

1. The right is reserved to reject any and all bids, to waive informalities, and to make award as may be determined to be in the best interest of the City of Newton.
2. Prices quoted must include delivery to the City , as specified on the Work Order.
3. No charges will be allowed for packing, crating, freight, Express or cartage unless specifically stated and included in the bid.
4. The award to the successful bidder may be canceled if successful bidder shall fail to prosecute the work with promptness and diligence.
5. Time in connection with discount offered will be computed from the date of delivery to the City, as specified on Work order, or from date correct invoice is received by the City, if the latter date is later than the date of delivery.
6. The successful bidder shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Seller.
7. The Seller shall indemnify and save harmless the City and all persons acting for on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof, which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Seller, within a reasonable time, will at it's expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment or apparatus, and refund the sums paid therefor.
8. The successful bidder shall comply with all applicable Federal State and Local laws and regulations.
9. Purchases made by the City are exempt from Federal excise taxes and bid prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
10. If so stated in the Invitation For Bid the successful bidder will be required to furnish a performance and/or a labor and material payment bond, in an amount, in a form and with a surety satisfactory to the City. The bidder shall be responsible for the cost of the bond(s).
11. If the Invitation for Bids requires bid surety, this surety shall be in the form of a cash, bid bond, cashier's check, treasurer's check, or certified check on a responsible bank, payable to the City of Newton, and must be filed with the original bid in the Office of the Purchasing Agent. Failure to do so will lead to rejection of bid. The bid surety will be returned to the successful bidder within seven (7) days execution of awarded, and approval by the City of performance and/or payment bond(s). In case of default, the bid surety shall be forfeited to the City.
12. Verbal orders are not binding on the City and deliveries made or work done without formal Work Order or Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim.
13. The Seller shall agree to indemnify, defend and hold the City harmless from any and all claims arising out of the performance of this contract.
14. "Equality - An item equal to that named or described in the specifications of the contract may be furnished by the Vendor and the naming of any commercial name, trademark or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of equality only. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. The name and identification of all materials other than the one specifically named shall be submitted to the City in writing for approval, prior to purchase, use or fabrication of such items. Subject to the provisions of M.G.L., Ch. 30, Sec. 39J, approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City

shall be final. The City may require tests of all materials so submitted to establish quality standards at the Vendor's expense. All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation of their equipment shall be complied with; responsibility for proper performance shall continue to rest with the Vendor.

For the use of material other than the one specified, the Vendor shall assume the cost of and responsibility for satisfactorily accomplishing all changes in the work as shown. If no manufacturer is named, the Vendor shall submit the product he intends to use for approval of the City.

Except as otherwise provided for by the provisions of M.G.L., Ch. 30, Sec. 39J, the Vendor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Vendor fails to obtain the approval for substitution under this clause. If any substitution is more costly, the Vendor shall pay for such costs."

15. Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan dated December 1999 is applicable to all City of Newton contracts for materials and supplies. A copy of this plan may be obtained from the Purchasing Department.

16. Right To Know:

Any vendor who receives an order or orders resulting from this invitation agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L., Ch. 111F, SS8, 9 and 10 and the regulations contained in 441 CMR SS 21.06 when deliveries are made. The vendor agrees to deliver all containers properly labeled pursuant to M.G.L. Ch. 111F, SS 7 and the regulations contained in 441 CMR SS 21.05. Failure to submit an MSDS and/or label on each container will place the vendor in noncompliance with the work order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action to prevent the vendor from selling said substances or mixtures containing said substances within the Commonwealth. All vendors furnishing substances or mixtures subject to Chapter 111F of the M.G.L. are cautioned to obtain and read the law and rules and regulations referred to above. Copies can be obtained from the State House Book Store, Secretary of State, State House, Room 117, Boston, MA 02133, (617-727-2834) for \$2.00 plus \$.65 postage.

17. INSURANCE REQUIREMENTS

The Contractor shall provide insurance coverage as listed below. This insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

WORKER'S COMPENSATION

Worker's Compensation: Per M.G.L. c.. 149, s. 34 and c.. 152 as amended.

COMMERCIAL GENERAL LIABILITY

Personal Injury	\$500,000 each occurrence
	\$1,000,000 aggregate
Property Damage	\$500,000 each occurrence
	\$1,000,000 aggregate

VEHICLE LIABILITY

Personal Injury	\$500,000 each person
	\$1,000,000 aggregate
Property Damage	\$300,000

The City shall be named as additional insureds on the Contractor's Liability Policies.

The Contractor shall not commence the work until proof of compliance with this has been furnished to the City by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.

The Contractor shall file the original and one certified copy of all policies with the City within ten (10) days after contract award. If the City is damaged by the Contractor's failure to maintain such insurance and to so notify the City, then the Contractor shall be responsible for all reasonable costs attributable thereto.

Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and City at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

**FAILURE TO COMPLY WITH THESE TERMS AND CONDITIONS COULD RESULT IN THE  
CANCELLATION OF YOUR CONTRACT.**





THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR  
**DIVISION OF OCCUPATIONAL SAFETY**  
PREVAILING WAGE PROGRAM  
[www.mass.gov/dos/pw](http://www.mass.gov/dos/pw)

**NOTICE: TO AWARDING AUTHORITIES AND CONTRACTORS**

ISSUED: SEPTEMBER 1, 2006

**DRIVERS WHO HAUL BITUMINOUS CONCRETE (ASPHALT)**

The Massachusetts Supreme Judicial Court recently affirmed that drivers who haul bituminous concrete to public construction projects are not covered by the Prevailing Wage Law while off-site, including time spent over-the-road and picking-up materials. These drivers are covered by the Prevailing Wage Law only while on-site at the public construction project.

In Teamsters Joint Council No. 10 v. Department of Labor, et al., 447 Mass. 100 (2006), the SJC upheld a 2001 administrative decision limiting the applicability of prevailing wage rates to the time bituminous drivers spend at the public construction site. This most recent decision of the SJC followed a 1989 ruling that had upheld an earlier Department of Labor (and Industries') policy that had deemed this category of drivers to be "teamsters" under the Law and, therefore, entitled to prevailing wage rates. See Construction Industries of Massachusetts v. Commissioner of Labor and Industries, 406 Mass. 162 (1989). However, the earlier court case had left open the question of whether this entitled these bituminous drivers to prevailing wage rates for their over-the-road time as well as their on-site time. This most recent decision has now answered that question.

All of the requirements of the Prevailing Wage Law, including certified weekly payroll requirements, apply to bituminous drivers for all time spent at the public construction site.

**DRIVERS WHO HAUL READY-MIX CONCRETE (CEMENT)**

Drivers who haul ready-mix concrete to public construction projects are not covered by the Prevailing Wage Law while off-site, including time spent over-the-road and picking-up materials. These drivers are covered by the Prevailing Wage Law while on-site at the public construction project. This applicability determination was established by a 2001 administrative decision of the Department of Labor's Division of Occupational Safety.

All of the requirements of the Prevailing Wage Law, including certified weekly payroll requirements, apply to ready-mix drivers for all time spent at the public construction site.

Please feel free to contact the Division of Occupational Safety at 617-626-6953 if you have any questions. Questions about enforcement of the Prevailing Wage Law may be directed to the Attorney General's Fair Labor and Business Practices Division at 617-727-3465

## CITY OF NEWTON

### SUMMARY OF WORK AND SPECIFIC REQUIREMENTS OF THE CONTRACT

#### FOR PUBLIC WORKS CONSTRUCTION

##### I. SUMMARY OF WORK

1.

**The work under this contract consists of supplying, delivering and discharging approximately two-thousand five hundred (2,500) cubic yards of 4,000 psi ¾" aggregate transit-mixed cement concrete with lampblack.**

**These deliveries shall be made to various construction sites located throughout the City of Newton.**

2. All other work described in the Project Manual and/or shown on the Plan(s) unless specifically indicated as not to be done.

B. In addition the work under the contract includes:

1. Work outside the Project Site as called for in the Project Manual and/or Plan(s) and as required for the performance of the work.
2. The restoration of any items damaged or destroyed by encroaching upon areas outside the Project Site.
3. All labor, materials, tools, and equipment necessary to do all the work required for the completion of each item as specified, which shall limited not only to the exact intent mentioned, but shall include incidental work necessary or customarily performed for the completion of that item.
4. All items not specifically mentioned or noted in the Project Manual and/or Plan(s), but which are obviously necessary to make a complete working installation.

C. The Proposed Contract Price shall be complete costs, including overhead, profit, insurance, transportation, and all other costs connected with, or incidental to the work described.

##### II. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. Upon notification the Contractor shall commence the work specified in the Project Manual as directed by the City. The work shall proceed in a continuous uninterrupted fashion with adequately staffed crews, in a satisfactory manner, which will assure that the work is completed in a timely manner to the satisfaction of the City.

B. The time for substantial completion pursuant to Article 2 of the Contract shall:

extend from **April 1, 2011 through March 31, 2012**. It is further understood that in the event the term of this contract extends beyond June 30 in any calendar year, the City reserves the right to terminate the contract if funding for its continuance is not appropriated in the succeeding fiscal year commencing July 1.

Time is of the essence for the completion of this contract. If the Contractor fails to achieve substantial or final completion of the Work within the time required by the contract, and unless an extension of time is granted,

the Contractor shall pay to the City as liquidated damages, the applicable amount specified in **Article 7** of the **General Conditions** for each day of delay. If different completion dates are specified in the Contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another section in this Contract, liquidated damages shall not be due the City. The Contractor remains liable for damages caused other than by delay.

### III. INSURANCE REQUIREMENTS

- A. The Contractor shall carry and maintain until acceptance of the work such Workmen's Compensation, Automobile Liability, Public Liability, Contingent Public Liability, Property Damage and Contingent Property Damage Insurance, each including blasting coverage, as shall protect him and any sub-contractor performing work covered by this contract from all claims and liability for damages for personal injury, including accidental death, and for property damage which may arise from operations under this contract, whether such operations be by himself or by any sub-contractor or by any one directly or indirectly employed by either of them.
- B. The City shall be named as an additional insured on such policy.
- C. The amounts of such insurance shall be as follows:
  - 1. Workmen's Compensation Insurance as required by Massachusetts General Law.
  - 2. Automobile Liability Insurance on all vehicles owned or hired for a.) Bodily Injury in an amount not less than \$500,000.00 for each occurrence, and not less than \$1,000,000.00 aggregate; b.) Property Damage in an amount not less than \$250,000.00 each occurrence, and not less than \$500,000.00 aggregate.
  - 3. Public Liability Insurance and Contingent Public Liability Insurance in an amount not less than \$500,000.00 for injuries, including accidental death to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of one accident.
  - 4. Property Damage Insurance and Contingent Property Damage Insurance in an amount not less than \$250,000.00 on account of one accident, and in an amount of not less than \$500,000.00 on account of all accidents.
  - 5. General Liability Insurance shall include Contractual Liability Insurance.
- D. Before any work is started, the successful bidder shall be required to file with the Chief Procurement Officer certificates of insurance coverage as detailed above, with policy numbers and dates of expiration.
- E. The Contractor shall indemnify, hold harmless and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, including attorney's fees and interest arising out of or resulting directly or indirectly from the services rendered pursuant to this Contract, provided that any such action, cause of action, claim, demand, damage, cost, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, which (2) is caused in whole or in part by any act or omission of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

**END OF SECTION**

The Contractor shall insert prices for each item in ink, in both words and figures, and is to show a total bid price. In the event a discrepancy between the written words and figures, the written words shall govern. In the event an error in the bidders total bid price, the corrected total bid obtained by the summation of the products of the unit prices multiplied by the respective quantities shall stand as the bidder's total bid price.

The estimated quantities shown here are based solely upon a reasonable assessment of the project parameters, thus the Contractor is advised that the actual quantities may vary substantially as field conditions, monetary issues stemming from cost adjustments, and/or a change in the scheduling of work may necessitate.

**NOTICE:** In accordance with MGL Chapter 303 of the Acts of 2008 this bid contains price adjustments for (1) Fuel (combination of Gasoline & Diesel) and (2) Portland Cement. It is the bidder's responsibility to familiarize themselves with these price adjustment programs prior to entering a bid.

ITEM DESCRIPTION & BID PRICE	ESTIMATED QUANTITIES	UNIT	TOTAL COST
<p>ITEM: <b>0.303FC - FUEL COSTS*</b></p> <p>* Bidder's may elect <b>NOT</b> to bid the cost of fuel(s) separately, but to do so they must insert the term <b>N/A</b> (<i>i.e. Not Applicable</i>) in all (4) <u>entry lines</u> of this Item 0.303FC. This is <b>a mandatory requirement</b> to verify the Contractor has waived his option to bid the cost of fuel(s) separately and has instead elected to factor their delivery &amp; discharge fuel costs into each one of the separate bid price(s) of <b>Items 1,2,3,4,5,6,7,8,9 &amp; 10</b>.</p> <ul style="list-style-type: none"> <li>Contractor's bidding this line item must <b>NOT</b> include the cost of fuel in Line Items 1,2,3,4,5,6,7,8,9 &amp; 10.</li> </ul> <p><b>0.303FC</b> = total combined number of gallons of Fuel (Diesel &amp; Gasoline) to deliver &amp; discharge <u>One Load</u> of Cement Concrete (one load = round trip):</p> <p>(IN WORDS) _____ Gallons Per Load</p> <p>(IN FIGURES) _____ Gallons Per Load</p> <p>( _____ Gallons per Load ) x ( \$ <u>3.297</u> /GALLON ) x  <i>Base Price</i>  <i>Per Mass Highway</i></p> <p>For a bid to be considered responsive the Contractor <b>MUST</b> supply the following information:</p> <p>Address of Batching Plant: _____</p> <p>_____</p> <p>The One –Way shortest distance listed by Mapquest (<a href="http://www.mapquest.com">www.mapquest.com</a>) from the batching plant to Newton City Hall, 1000 Commonwealth Ave., Newton Centre, MA 02459 _____ Miles</p> <p><i>The City of Newton reserves the right to verify this information before and after awarding the bid.</i></p>	300	Loads	<p>The averaged Base Price (BPF) shown here is for the <b>Comparison of Bids Only.</b> (See Spec. Prov.)</p> <p>\$ _____</p>

ITEM DESCRIPTION & UNIT COST	ESTIMATED QUANTITIES	UNIT	TOTAL COST
<p><b>ITEM: 0.303PC- DIFFERENTIAL FOR PORTLAND CEMENT</b></p> <p>(Informational Note: One (1) Cubic Yard of 4,000 psi ¾" aggregate transit-Mix Concrete contains Three-tenths (.3) Ton of Portland Cement)</p> <p>The <b>Base Price</b> for Portland Cement is:</p> <p style="text-align: center;">\$ <u>101.88</u> PER TON OF PORTLAND CEMENT</p> <p style="text-align: center;"><i>Base Price Per Mass Highway</i></p>	N/A	N/A	<p>The Base Price (BPPC) shown here shall be used to determine the monthly price differential (See Spec. Prov.)</p> <p>\$ <u>N/A</u></p>
<p><b>ITEM: 1 - FOR THE SUPPLY &amp; DELIVERY OF 1 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>1 C.Y. DELIVERY</b></p>	5	Delivery's	\$ _____
<p><b>ITEM: 2 - FOR THE SUPPLY &amp; DELIVERY OF 2 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>2 C.Y. DELIVERY</b></p>	5	Delivery's	\$ _____
<p><b>ITEM: 3 - FOR THE SUPPLY &amp; DELIVERY OF 3 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>3 C.Y. DELIVERY</b></p>	20	Delivery's	\$ _____

ITEM DESCRIPTION & UNIT COST	ESTIMATED QUANTITIES	UNIT	TOTAL COST
<p><b>ITEM: 4 - FOR THE SUPPLY &amp; DELIVERY OF 4 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>4 C.Y. DELIVERY</b></p>	<b>10</b>	<b>Delivery's</b>	\$ _____
<p><b>ITEM: 5 - FOR THE SUPPLY &amp; DELIVERY OF 5 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>5 C.Y. DELIVERY</b></p>	<b>10</b>	<b>Delivery's</b>	\$ _____
<p><b>ITEM: 6 - FOR THE SUPPLY &amp; DELIVERY OF 6 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>6 C.Y. DELIVERY</b></p>	<b>10</b>	<b>Delivery's</b>	\$ _____
<p><b>ITEM: 7 - FOR THE SUPPLY &amp; DELIVERY OF 7 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b></p> <p><b>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</b></p> <p>THE SUM OF: _____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____) PER <b>7 C.Y. DELIVERY</b></p>	<b>10</b>	<b>Delivery's</b>	\$ _____



ITEM DESCRIPTION & UNIT COST	ESTIMATED QUANTITIES	UNIT	TOTAL COST
<b>ITEM: 8 - FOR THE SUPPLY &amp; DELIVERY OF 8 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b>  <div>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</div>  THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER <b>8 C.Y. DELIVERY</b>	<b>10</b>	<b>Delivery's</b>	\$ _____
<b>ITEM: 9 - FOR THE SUPPLY &amp; DELIVERY OF 9 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b>  <div>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</div>  THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER <b>9 C.Y. DELIVERY</b>	<b>10</b>	<b>Delivery's</b>	\$ _____
<b>ITEM: 10 - FOR THE SUPPLY &amp; DELIVERY OF 10 C.Y. OF CEMENT CONCRETE WITH LAMP BLACK</b>  <div>DO NOT INCLUDE FUEL COSTS UNLESS WAIVED (See Item 0.303FC) *</div>  THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER <b>10 C.Y. DELIVERY</b>	<b>150</b>	<b>Delivery's</b>	\$ _____
<b>ITEM: 11 - ADDED CHARGE PER C.Y. FOR 1" FIBER REINFORCEMENT</b>  THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER <b>'CUBIC YARD'</b>	<b>75</b>	<b>'C.Y.'</b>	\$ _____

ITEM DESCRIPTION & UNIT COST	ESTIMATED QUANTITIES	UNIT	TOTAL COST
<p>ITEM: 12 - ADDED CHARGE PER C.Y. FOR HEAT TREATMENT (COLD WEATHER PRE-TREATMENT)</p> <p>THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER 'CUBIC YARD'</p>	300	'C.Y.'	\$ _____
<p>ITEM: 13 - ADDED CHARGE PER C.Y. FOR COLORING AGENT (SCOFIELD CHROMIX 'NAVAJO RED' @ 5 SACKS/C.Y.)</p> <p>THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER 'CUBIC YARD'</p>	20	'C.Y.'	\$ _____
<p>ITEM: 14 - ADDED CHARGE FOR A <u>SATURDAY DELIVERY</u></p> <p>THE SUM OF: _____ DOLLARS AND _____ CENTS (\$ _____) PER SATURDAY DELIVERY</p>	15	Delivery's	\$ _____
<p>ITEM: 15 -CITY AGENT'S DISCRETIONARY FUND FOR MIX ADJUSTMENT(S)</p> <p>THE SUM OF: THREE THOUSAND _____ DOLLARS AND NO _____ CENTS (\$ 3,000.00) PER ALLOWANCE</p>	1	ALL.	\$3,000

**TOTAL COST: \$ \_\_\_\_\_**  
*Total shall be placed in paragraph "C" of the Bid Form*

**END OF SECTION**



**SECTION 0. 303****ITEM: 0.303FC - FUEL COSTS\***Description

\* The Contractor may elect **NOT** to bid the cost of fuels separately, but to do so he must insert the term N/A (i.e. Not Applicable) in **all (4) entry lines** of Item 0.303FC on Item Sheet 1. This is a **mandatory requirement** to verify that the Contractor has formally waived their option to bid the cost of fuel(s) separately and has instead elected to factor the round-trip delivery & discharge fuel costs into each one of the separate bid price(s) of Items 1,2,3,4,5,6,7,8,9 & 10.

(a) Under this item the Contractor shall be paid for all the fuel(s) consumed in the performance of this contract.

(b) The intent of this program is to maintain a reasonable and continuous parity with the regional fluctuations that may occur in the cost of petroleum based fuel products. It is important to note that due to the numerous types of; fuel, equipment, vehicles, programs, and efficiency factors related to each of these operational elements and therefore unique to the Contractor's own enterprises, that any fuel adjustments made under this item are intended only to defray and offset extraordinary market trends in petroleum based fuel products.

(c) **IMPORTANT NOTE:** An adjustment to the cost of fuels may result in an increase of payment if the fuel market has trended upward, or it may otherwise result in a decrease of payment if the fuel market has trended downward. The supplier is also advised that in certain cases the supply vehicle will be required to make multiple stops in the course of discharging one entire load of cement concrete for which there shall be no additional fuel cost payment.

(d) The City of Newton reserves the right, before awarding the Contract, to request from the Contractor a tabulated accounting of the means and methods upon which the number of gallons bid per delivery and discharge was derived. The intent of this evaluation is to preserve the fairness of this program by preventing bidders from placing an imbalanced bid that may ultimately cause excessive financial impact to either party. These tabulations will include, but shall not be limited to, an accounting of all transport equipment and their associated manufacturers fuel consumption rates which the Contractor/supplier intends to use to complete the work under this contract. In the event the City of Newton, subsequent to performing an analysis, determines that the Contractor's bid, with regard to the consumption of fuel per round trip (with discharge), is excessive for the type transport equipment traditionally deployed for this type of work. **The City of Newton reserves the right to waive any informalities in any or all bids, or to reject any or all bids, if it be in the public interest to do so.**

(e) The Contractor shall also incorporate into their bid the amounts of fuel required for any work performed by their subcontractors or by their vendors.

Method of Administration

(f) In accordance with Chapter 303 Acts of 2008, the City of Newton shall use the most current 'new' pricing of Diesel and Gasoline fuel as they are indicated on the Mass Highway web site at the time of advertisement.

<http://www.mhd.state.ma.us/default.asp?pgid=content/fuelPrices&sid=about#para24>

The **average** of these two values (Diesel & Gasoline) shall serve as the value basis for determining the **Base Price** of Fuel (BPF) at the time of the advertisement. Subsequently, during the course of the contract, the **Period Price** of Fuel (PPF) shall be determined in the same manner, but at the end of each calendar month, and if the **averaged** Period Price (PPF) has either increased or decreased by more than five percentage points (5%) relative to the **averaged** Base Price of Fuel (BPF), then the cost of fuel(s) for the applicable calendar month shall be paid for at the adjusted rate, otherwise the cost of fuel(s) for the applicable calendar month shall be paid for at the initial Base Price of Fuels.

**The Contractor is advised to verify these value standards and citations prior to placing their bid.**

Method of Administration

- (g) When a cost adjustment is applied it shall be inclusive of the five (5%) variation.
- (h) Payments for fuel shall be calculated at the end of each calendar month and they shall be based upon the acceptable deliveries of transit-Mix Concrete delivered and discharged within that particular calendar month. **(Program Note: In the event a continuous wet-pour operation spans several days but the delivery & discharge of loads is performed in two separate months, then two separate fuel payments shall be made).**
- (i) Immediately upon delivery of any transit-Mix Concrete product, the Contractor shall furnish the Engineer with a computer generated invoice that has been issued directly by the cement concrete batching plant. The invoice shall clearly show the tare volume, type of cement concrete and the date of delivery for each load of transit-mixed cement concrete which is ultimately delivered and discharged. The plant issued tare/volume slips are to bear the name of the vendor and shall **be surrendered to the DPW Agent-In-Charge immediately upon the delivery of the material. The City will have no obligation to pay for any errant slips which are forwarded after the wet-pour has ceased.**
- (j) **No upward fuel adjustment will be made for any delivery and discharge which takes place beyond the completion date of the contract** unless the Contractor's work has been delayed due to no fault of their own (i.e. Preparation work that must be performed by others before the Contractor can complete their own tasks in the contractually allotted time.) Any such delay must be brought to the attention of the DPW Agent-In-Charge in a timely manner at which time the Agent shall investigate, verify, and document the extenuating circumstances and inform the Contractor of their decision.

Method of Payment

- (k) Payment formula:

**BPF** = The Base Price of Fuel on the bid release date (Averaged cost of Diesel & Gasoline in \$/Gallon)

**PPF** = The Period Price of Fuel for the applicable calendar month (Averaged cost of Diesel & Gasoline in \$/Gallon)

**G** = Gallons of fuel bid by the Contractor to Deliver & Discharge One (1) Load of concrete (Gal./ Round Trip D)

**D** = The total number of Delivery & Discharges in the applicable calendar month (D)

**If a change in (PPF) does not exceed +/- 5% relative to the (BPF) then:  $(BPF) \times G \times D = \text{Fuel Payment } (\$)$**

**If a change in (BPF) does exceed +/- 5% relative to the (BPF) then:  $(PPF) \times G \times D = \text{Fuel Payment } (\$)$**

Basis of Payment

**\* The Contractor may elect NOT to bid the cost of fuels separately, but to do so he must insert the term N/A (i.e. Not Applicable) in all (4) entry lines of Item 0.303FC on Item Sheet 1. This is a mandatory requirement to verify that the Contractor has formally waived their option to bid the cost of fuel(s) separately and has instead elected to factor their round-trip delivery & discharge fuel costs into each one of the separate bid price(s) of Items 1,2,3,4,5,6,7,8,9 & 10.**

- (l) The round trip cost of fuel(s) consumed for the delivery and discharge (D) of one load of cement concrete shall be paid for under **Item 0.303FC**. The cost of fuel used to complete the work under this contract shall be made in accordance with the applicable Period Price for Diesel & Gasoline fuels as posted for each calendar month in which the work was performed. The Contractor will be paid the contract unit price **per gallon(s) of fuel consumed for each load** of transit-Mix Concrete delivered and discharged within each applicable calendar month as specified herein.

- (m) The Contractor shall be responsible for disbursing fuel cost payments to their subcontractors and/or to their vendors.

- (n) No payment shall be made for any fuel(s) consumed to remedy and/or to replace any deficient material supplied by the Contractor or their subcontractors.

**SECTION 0. 303****ITEM 0.303PC - DIFFERENTIAL FOR PORTLAND CEMENT****Description**

- (a) Under this item a differential value shall be calculated and applied to the payment on a monthly basis. The differential value shall be based upon the amount of Portland Cement contained in the total tare volume of cement concrete delivered and discharged in each respective calendar month.
- (b) **Item 0. 303PC** is to provide a structured means, whereby the cost of the Portland Cement contained in 4,000 psi  $\frac{3}{4}$ " aggregate transit-mixed cement concrete is evaluated each calendar month, and under certain market conditions this value is adjusted **either upward or downwards** to maintain a reasonable and continuous parity with the regional fluctuations that may occur in the price of this commodity.
- (c) **IMPORTANT NOTE:** An adjustment to the cost of the Portland Cement component may result in an **increase** of payment if the market has trended upward, or it may otherwise result in a **decrease** of payment if the market for Portland Cement has trended downward. Further, these adjustments **do not** compensate the Contractor for the entire cost of the 4,000 psi cement concrete products consumed in the execution of this contract **but only** for the monthly differential value(s) which may occur with regard to the Portland Cement component.

**Method of Administration**

- (d) In accordance with Chapter 303 Acts of 2008 the City of Newton shall use the most current 'new' pricing for **Portland Cement** as indicated on the Mass Highway web site at the time of advertisement.

<http://www.mhd.state.ma.us/default.asp?pgid=content/fuelPrices&sid=about#para24>

The value at the time of advertisement shall serve as the Base Price of Portland Cement (BPPC). Subsequently, and during the course of the contract, the Period Price of the Portland Cement (PPPC) component shall be determined in the same manner and at the end of each respective calendar month, and if the Period Price (PPPC) has either increased or decreased by more than five percentage points (5%) relative to the Base Price (BPPC) index, then the differential cost of the Portland Cement component shall be paid for at the adjusted rate, otherwise no adjustment shall be made.

**The Contractor is advised to verify these value standards and citations prior to placing their bid.**

- (e) The differential value for the Portland Cement component shall be calculated at the end of each calendar month and it shall be based upon the number of acceptable cubic yards of transit-Mix Concrete delivered and discharged within that particular calendar month. This value shall be derived by applying a fixed factor to the tonnage of Portland Cement that is contained in a single cubic yard of 4,000 psi  $\frac{3}{4}$ " aggregate transit-mixed cement concrete. **(Program Note: In the event a continuous delivery & discharge operation spans several days but is performed in two separate months, then two separate Portland Cement calculations shall be made.)**
- (f) When a cost differential is applied it shall be inclusive of the five (5%) variation.
- (g) Immediately upon delivery of any transit-Mix Concrete product, the Contractor shall furnish the Engineer with a computer generated invoice that has been issued directly by the cement concrete batching plant. The invoice shall clearly show the **tare volume, type of cement concrete and the date of delivery** for each load of transit-mixed cement concrete which is ultimately delivered and discharged. The plant issued tare/volume slips are to bear the name of the vendor and shall **be surrendered to the DPW Agent-In-Charge immediately upon the delivery of the material. The City will have no obligation to pay for any errant slips which are forwarded after the wet-pour has ceased.**

Method of Administration (Continued)

(h) No **upward** Portland Cement component adjustment will be made for any delivery and discharge which takes place beyond the completion date of the contract unless the Contractor's work has been delayed due to no fault of their own (i.e. Preparation work that must be performed by others before the Contractor can complete their own tasks in the contractually allotted time.) Any such delay must be brought to the attention of the DPW Agent-In-Charge in a timely manner at which time the Agent shall investigate, verify, and document the extenuating circumstances and inform the Contractor of their decision.

Method of Payment

(i) Payment formula:

**BPPC** = The Base Price Portland Cement Cost Index on the bid release date (\$/Ton of Portland Cement (P.C.)

**PPPC** = The Period Price for One Ton of Portland Cement for the applicable calendar month in which it was delivered (\$/Ton of P.C.)

**V** = Total tare Volume 4,000 psi  $\frac{3}{4}$ " agg. cement concrete for the applicable calendar month (Cubic Yards)

**.3** = Tons of Portland Cement in One (1) Cubic Yard of 4,000 psi  $\frac{3}{4}$ " agg. transit-Mix Concrete (610 lbs. P.C/C.Y.)

**If a change in (PPPC) does not exceed +/- 5% relative to the (BPPC) then: No differential adjustment.**

**If a change in (PPPC) exceeds +/- 5% relative to the (BPPC) then:**

$$(PPPC - BPPC) \times V \times .3 = \text{Differential Value for Current Pay Period (\$)}$$

Basis of Payment

(j) Under **Item 0.303PC** the differential value for **Portland Cement contained in One (1) cubic yard of 4,000 psi  $\frac{3}{4}$ " aggregate transit-Mix Concrete** used to complete the work under this contract shall be made in accordance with the Period Price index values for Portland Cement posted for each calendar month in which the work was performed and relative to the Base Price as specified herein. Subsequently these values shall be factored in accordance with the above-noted formula (Par. i).

(k) **The differential value for Portland Cement shall be based upon a fixed value of Three-tenths (.3) Tons Portland Cement contained in One (1) Cubic Yard of 4,000 psi  $\frac{3}{4}$ " aggregate transit-mixed cement concrete, with said value differential being factored only on the number of Cubic Yards of Cement Concrete actually used, verified and/or accepted by the Engineer.**

(l) No adjustment shall be made for any material which is rejected or is deemed to be of an inferior quality. Nor shall any adjustment be made for Portland Cement contained in any cement concrete material which is used to remedy cement concrete material(s) supplied by the vendor, proven to be deficient and/or of inferior quality during or subsequent to discharge, and contained in any work performed under this contract.

(m) The Contractor shall be responsible for disbursing the Portland Cement cost adjustments to their subcontractors and/or to their vendors.

**SECTION 1****Standard Orders: \***

**Under Items 1,2,3,4,5,6,7,8,9& 10:**  
**DO NOT include the cost of fuel(s) unless waived (See Item 0.303FC) \***

Item 1 - FOR THE SUPPLY & DELIVERY OF	1 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 2 - FOR THE SUPPLY & DELIVERY OF	2 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 3 - FOR THE SUPPLY & DELIVERY OF	3 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 4 - FOR THE SUPPLY & DELIVERY OF	4 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 5 - FOR THE SUPPLY & DELIVERY OF	5 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 6 - FOR THE SUPPLY & DELIVERY OF	6 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 7 - FOR THE SUPPLY & DELIVERY OF	7 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 8 - FOR THE SUPPLY & DELIVERY OF	8 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 9 - FOR THE SUPPLY & DELIVERY OF	9 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK
Item 10 - FOR THE SUPPLY & DELIVERY OF	10 C.Y. OF CEMENT CONCRETE WITH LAMPBLACK

**Special Orders:**

- Item 11 - ADDED CHARGE PER C.Y. FOR FIBER REINFORCEMENT  
 Item 12 - ADDED CHARGE PER C.Y. FOR HEAT TREATMENT  
 Item 13 - ADDED CHARGE PER C.Y. FOR COLORING AGENT  
 Item 14 - ADDED CHARGE FOR A SATURDAY DELIVERY

**Description**

\* The Contractor may elect **NOT** to bid the cost of fuels separately, but to do so he must insert the term N/A (i.e. Not Applicable) in **all (4) entry lines** of Item 0.303FC on Item Sheet 1. This is a **mandatory requirement** to verify that the Contractor has formally waived their option to bid the cost of fuel(s) separately and has instead elected to factor their round-trip delivery & discharge fuel costs into each one of the separate bid price(s) of Items 1,2,3,4,5,6,7,8,9 & 10.

- (a) Under these items the Contractor shall be responsible for supplying, delivering and discharging, in a timely fashion, various types of cement concrete, of various volumes, to the City of Newton Department of Public Works project sites which will be located at multiple locations throughout the City of Newton. **The supplier is further advised that in certain cases, due to the nature of the work, the supply vehicle will be required to relocate, and/or to make multiple stops, in the course of discharging an entire load of cement concrete.**
- (b) Due to the nature of this work the Contractor is advised that **fifteen (15) minutes per cubic yard shall be considered the standard typical discharge time**. In the event the Contractor feels this standard has been unreasonably exceeded then the waiting and/or discharge time period must be verified by both the DPW working foreman and the Contractor's driver at the time of each occurrence, and so noted on the delivery slip by both parties, and subsequently, should the vendor find it necessary to file a claim for additional compensation then the delivery slip shall act as the documentation medium. However under no circumstances shall the City pay more than reasonable industry rates pursuant to any such claim for extra compensation, and any such claim must be made within three (3) days of its occurrence (Saturday, Sundays and holidays excepted).



Description (Continued)

(c) The City will issue payments on a monthly basis, however **the Contractor is to Fax all outstanding costs to the City of Newton Department of Public Works on a weekly basis** so that, subject to fuel and Portland Cement adjustments, so that the initial encumbrance of funds for this program is not exceeded.

Materials

(d) All base cement shall be of a **light grey color**.

(e) All concrete shall be transit mix and shall conform to the current specifications of A.S.T.M. C-94.

(f) Cement concrete shall be air entrained conforming to the classification of concrete mixes of Division III Subsection M4.02.00 and the current specifications of Section M4 of the Massachusetts Standard Specifications for Highways and Bridges of 1988 Cement concrete shall have a 28 day compressive strength of **4,000 PSI using 3/4 inch aggregate, and with an entrained air content of  $7.0 \pm 1.0\%$** .

(g) **Lamp black:** Under **Item 1 thru Item 10** ordinary or emulsified Carbon Black (lampblack) shall be added at the rate of **2 pounds per cubic yard**.

(h) **Fiber Reinforcement:** Under **Item 11 One inch (1") ProMesh® Reinforcement Fibers** (or an approved equal) shall be added to the cement concrete **at a rate of one and a half (1.5) pounds per cubic yard of cement concrete** or otherwise in accordance with the manufacturers prevailing recommendations and instructions. A copy of the manufacturers recommendations and instructions shall be forwarded to the City of Newton upon request and at no extra charge

(i) **Heat Treatment:** Under **Item 12** the base elements for 'cold weather concrete' shall be prepared by utilizing heated water and/or heated aggregate (prior to cement being added) via an approved industry method so that the combined temperature of the aggregate and water mixture is not less than seventy degrees Fahrenheit (70° F) nor more than one hundred forty degrees Fahrenheit (140° F). Subsequently the temperature of the concrete shall not be less than sixty degrees Fahrenheit (60° F) nor more than ninety degrees Fahrenheit (90° F) at the time of delivery and placement. The heating shall be done in a manner to preclude the occurrence of overheated areas which might result in damage to the materials. Any materials, and/or discharged cement concrete, containing frost, lumps and/or hardened material shall be rejected and disposed of at the expense of the Vendor. 'Cold weather concrete' shall be delivered **only upon request of the City Agent and then generally only for the period of October 15 through to April 15.** Cold weather concrete shall conform to the current specifications of Section M4 of the Massachusetts Standard Specifications for Highways and Bridges of 1988.

(j) **Coloring Agent:** Under **Item 13 'Navajo Red' Scofield Chromix Normal Set Coloring Agent** (or an approved equal) shall be added to **a light gray cement concrete at a rate of five (5) sacks per cubic yard of cement concrete** or otherwise in accordance with the manufactures prevailing recommendations and instructions. A copy of the color samples, and the manufacturers' recommendations and instructions shall be forwarded to the City of Newton upon request and at no extra charge. Further, once selected, the amount of coloring agent shall be strictly controlled and shall be clearly noted by the plant manager on every delivery slip, so that all subsequent loads are guaranteed to be of a uniform color. To that end all base cement materials are to be supplied with equal consistency such that, **after the end of a six month curing period, all cement concrete shall have attained a reasonably uniform appearance in the field**, and the City Agents decision shall be final. **Any remedial work necessitated due to unreasonable color variations shall be done at the Vendors expense. Further, due to the nature of this work the City may desire to alter the proportions and/or the coloring agent. In that event any difference in price shall be paid for under Item 15 @ CITY AGENT'S DISCRETIONARY FUND FOR MIX ADJUSTMENT(S)**

Materials (Continued)

(k) Upon delivery of each load, the City Agent shall be furnished with a plant issued invoice which clearly states the design mix, the quantities of any admixture(s), the tare volume, and the date of batching. Any concrete mix, which when tested on the job site is found to contain quantities of entrained air less than six (6), or more than eight (8) per cent, and/or which yields a slump of less than three (3) inches, or greater than five (5) inches, shall be rejected and the decision of the City Agent shall be final. However the City Agent reserves the right to change the above mix in order to meet the required strength test.

(l) Immediately upon delivery of any transit-Mix Concrete product, the Contractor shall furnish the Engineer with a computer generated invoice that has been issued directly by the cement concrete batching plant. The invoice shall clearly show the **tare volume, type of cement concrete and the date of delivery** for each load of transit-mixed cement concrete which is ultimately delivered and discharged. The plant issued tare/volume slips are to bear the name of the vendor and shall **be surrendered to the DPW Agent-In-Charge immediately upon the delivery of the material.** The City will have no obligation to pay for any errant slips which are forwarded after the wet-pour has ceased.

Basis of Payment:

\* The Contractor may elect **NOT** to bid the cost of fuels separately, but to do so he must insert the term **N/A** (*i.e. Not Applicable*) in **all (4) entry lines** of Item 0.303FC on **Item Sheet 1**. This is a **mandatory requirement** to verify that the Contractor has formally waived their option to bid the cost of fuel(s) separately and has instead elected to factor their round-trip delivery & discharge fuel costs into each one of the separate bid price(s) of Items 1,2,3,4,5,6,7,8,9 & 10.

(m) Under **Items 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10** the Contractor shall be paid the contract unit price per cubic yard for the cement concrete with lampblack supplied, delivered and subsequently discharged at the construction site. **These various sized loads are to be filled, transported, and subsequently invoiced, just as they were ordered by the City Agent. The combining 'short loads' to fill an order of a larger volume will not be allowed.** The unit price shall include full compensation for all labor, materials, tools, fuel \*, transportation \*, equipment and all incidentals necessary to provide the cement concrete under these items and as specified herein.

(n) Under **Item 11** the Contractor shall be paid an additional fee at the contract unit price per cubic yard for supplying and adding fiber reinforcement to the cement concrete **but only when specifically ordered to do so by the City Agent.** Under this item (Item 11) the additional charge shall be computed based on the actual number of cubic yards contained in the base load as described under Items 1 thru 10, but with said additional fees being shown as a separate entity on the invoice for clarification purposes. The unit price shall include full compensation for all labor, materials, tools, fuel, transportation, equipment and all incidentals necessary to provide the cement concrete additive as specified herein.

(o) Under **Item 12** the Contractor shall be paid an additional fee at the contract unit price per cubic yard for providing heat treatment(s) to the cement concrete **but only when specifically ordered to do so by the City Agent.** Under this item (Item 12) the additional charge shall be computed based on the actual number of cubic yards contained in the base load as described under Items 1 thru 10, but with said additional fees being shown as a separate entity on the invoice for clarification purposes. The unit price shall include full compensation for all labor, materials, tools, fuel, transportation, equipment and all incidentals necessary to provide the cement concrete pre-treatment process' as specified herein.

(p) Under **Item 13** the Contractor shall be paid an additional fee at the contract unit price per cubic yard for supplying and adding coloring agent to the cement concrete **but only when specifically ordered to do so by the City Agent.** Under this item (Item 13) the additional charge shall be computed based on the actual number of cubic yards contained in the base load as described under Items 1 thru 10, but with said additional fees being shown as a separate entity on the invoice for clarification purposes. **Further, even though the cement concrete WILL NOT be supplied with lampblack under this program still the supply, delivery and discharge bid prices of**

Basis of Payment (Continued)

**Items 1 thru 10 shall be used here to fix the base price of the order BEFORE the additional ‘colorizing’ fee is added.** The unit price shall include full compensation for all labor, materials, tools, fuel \*, transportation \*, equipment and all incidentals necessary to provide the colorized cement concrete under these items and as specified herein. **Further, due to the nature of this work the City may desire to alter the proportions and/or the coloring agent. In that event any difference in price shall be paid for under Item 15 @ CITY AGENT’S DISCRETIONARY FUND FOR MIX ADJUSTMENT(S).**

(q) Under **Item 14** the Contractor shall be paid an additional flat-rate fee at the contract unit price **per each delivery** made **on a Saturday**. This is a flat-rate unit price which shall be for full compensation of all additional charges incurred by the Contractor for providing the personnel and equipment, as well as for all administrative costs that are associated with Saturday deliveries.

(r) **Deliveries shall arrive on-site Monday through Friday, 7:00 a.m. – 3:30 p.m.**

(s) The delivery/discharge component of furnished cement concrete shall **NOT** include the cost of fuel, which is to be paid separately under Item 0. 303PF **UNLESS** the Contractor has formally waived this option, and in doing so has otherwise opted to include all transportation fuel costs in the separate bid price of Items **1,2,3,4,5,6,7,8,9 & 10** and has verified their choice by inserting the term N/A (*i.e. Not Applicable*) in all **item sheet entry lines** of Item 0. 303PF (This is a mandatory requirement to verify their inclusion of fuel costs under Items 1,2,3,4,5,6,7,8,9, & 10).



**SECTION 2****ITEM 15 - CITY AGENT'S DISCRETIONARY FUND FOR MIX ADJUSTMENT(S)****Description**

(a) In the event additional fees are associated with any adjustments made to the cement concrete mix at the batching plant, such as admixtures, and/or coloring agent(s), then such additional fees shall be paid for under this item (**Item 15**). **However no additional fees shall be paid for adjustments that HAVE NOT been specifically ordered and/or pre-approved by the City Agent.** This section is only to afford the City Agent the means by which the cement concrete mix and/or admixtures can be easily modified at the plant as field conditions may necessitate.

(b) The total sum to be allowed for all work under this item shall be **three thousand dollars (\$3,000.00)**.

(c) All work under this item shall be paid for upon an agreed upon lump sum per adjustment prior to order.

**Basis of Payment**

(d) Payment for work completed under **Item 15** shall be as specified above, in full or in part, as approved by the City Agent in advance for the goods and/or services rendered.

**END OF SECTION**